

IN THE COURT OF APPEALS OF IOWA

No. 0-677 / 10-0084
Filed October 6, 2010

STATE OF IOWA,
Plaintiff-Appellee,

vs.

RICHARD JOHN DELANEY,
Defendant-Appellant.

Appeal from the Iowa District Court for Dubuque County, Monica Ackley,
Judge.

Richard Delaney appeals from his sentence following his plea of guilty to
serious injury by reckless driving and operating while intoxicated. **AFFIRMED.**

Todd N. Klapatauskas of Reynolds & Kenline, L.L.P., Dubuque, for
appellant.

Thomas J. Miller, Attorney General, Jean Pettinger, Assistant Attorney
General, Ralph Potter, County Attorney, and Mark Hostager, Assistant County
Attorney, for appellee.

Considered by Vaitheswaran, P.J., and Eisenhauer and Danilson, JJ.
Tabor, J., takes no part.

DANILSON, J.

Richard Delaney appeals from his sentence following his plea of guilty to serious injury by reckless driving, in violation of Iowa Code section 707.6A(4) (2007), and operating while intoxicated, in violation of section 321J.2(1)(a) and (b). Delaney contends the district court abused its discretion in sentencing him to a term of imprisonment not to exceed five years. He alleges the court failed to consider the mitigating factors supporting a lesser sentence, including his age (fifty-seven), long term and stable employment, strong ties to his family, and character. Because we find the court properly considered the relevant sentencing factors and did not abuse its discretion in imposing Delaney's sentences, we affirm.

On the evening of September 6, 2008, Delaney was driving the wrong way on Highway 20, a divided highway near Peosta. Delaney's vehicle struck a Pontiac Grand Prix head-on that was travelling west on the highway. The passenger of the Grand Prix was removed from the vehicle by the jaws of life and taken by ambulance to the hospital for numerous abrasions and pain to her chest, knee, hip, left ankle, and left wrist. The driver of the Grand Prix was also taken by ambulance to the hospital for serious injuries to his right foot and left ankle. The driver's injuries have required several surgeries and have caused permanent damage to his feet. The driver's college education was put on hold, and both victims incurred significant medical bills as a result of the accident.

Delaney was also taken to the hospital by ambulance due to his injuries from the accident. A urine specimen collected nearly two hours later revealed an

alcohol concentration of .187. In Delaney's vehicle, police found an open can of beer, a cooler with ice packs and three full cans of beer, a prescription pill bottle containing marijuana, and a brass pipe with burnt marijuana residue. Delaney was in a coma for several weeks following the accident.

Ultimately, Delaney pled guilty to an amended charge of serious injury by reckless driving, a class D felony, and operating while intoxicated, a serious misdemeanor.

At the sentencing hearing on December 29, 2009, the court reviewed the presentence investigation report and received statements of counsel, Delaney, the victims, and several other witnesses. In arriving at its decision to sentence Delaney to a term of incarceration, the court acknowledged the strong support Delaney received from his family as a mitigating factor. Defense counsel also advised, as did the presentence investigation report, of Delaney's lengthy and stable employment at Thermo-Fischer in Dubuque, his seasonal officiating of high school and collegiate softball, and the seven grandchildren with whom he enjoyed spending his free time. The court noted other factors, however, that weighed heavily in its decision, including Delaney's continuing substance abuse problems (alcohol, marijuana, and prescription drugs), criminal record (prior convictions for operating while intoxicated), mental health issues, and failure to complete recommended treatment.

As the court stated,

I've looked at the Substance Abuse Services Center discharge summary, and that's the most disheartening of all of the documentation that I have, with regard to a history of substance

abuse and your lack of follow through with your substance abuse counseling, causes me severe pause.

Considering Delaney's need for rehabilitation and the need to protect the community, the court concluded that without treatment for his serious substance abuse issues, "the potential for [Delaney] to go out and make this wrong choice again is extremely high." The court concluded a term of imprisonment was justified in this case.

The sentencing colloquy, as well as the written judgment entry, form the basis of the record for an appellate review of abuse of discretion. *State v. Lumadue*, 622 N.W.2d 302, 304 (Iowa 2001). Here, the written sentencing order filed on January 5, 2010, provides that the court gave special significance to the following factors:

[T]he nature of the offenses, recommendations of the County Attorney, the Defendant's long history of substance abuse & lack of completion of substance abuse counseling, the pre-sentence investigation, and safety concerns for the public.

Our review of a sentence imposed in a criminal case is for correction of errors at law. *State v. Formaro*, 638 N.W.2d 720, 724 (Iowa 2002). However, the decision of the district court to impose a particular sentence within the statutory limits is cloaked with a strong presumption in its favor, and will only be overturned for an abuse of discretion or the consideration of improper matters. *Id.* In applying the abuse of discretion standard to sentencing decisions, it is important to consider the societal goals of sentencing criminal offenders, which focus on rehabilitation of the offender and the protection of the community from further offenses. *Id.* An abuse of sentencing discretion is found only if the

sentencing court's discretion has been exercised on grounds or for reasons clearly untenable or to an extent clearly unreasonable. *State v. Laffey*, 600 N.W.2d 57, 62 (Iowa 1999). "A sentence will not be upset on appellate review unless the defendant demonstrates an abuse of trial court discretion or a defect in the sentencing procedure, such as trial court consideration of impermissible factors." *State v. Loyd*, 530 N.W.2d 708, 713 (Iowa 1995) (citing *State v. Wright*, 340 N.W.2d 590, 592 (Iowa 1983)).

The district court considered and weighed multiple appropriate factors that appear to provide for Delaney's rehabilitation as well as the protection of the community. See Iowa Code § 901.5. After considering Delaney's contentions we conclude he has not demonstrated an abuse of discretion. Accordingly, we affirm.

AFFIRMED.